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Company, LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA, PHOENIX DIVISION**

PULTE HOME COMPANY, LLC, a Michigan limited liability corporation, on behalf of itself and as successor by conversion of Pulte Home Corporation, a Michigan corporation

Plaintiff,

V.

MIDWEST FAMILY MUTUAL INSURANCE COMPANY, an Iowa corporation; UNITED SPECIALTY INSURANCE COMPANY, a Delaware corporation; KNIGHT SPECIALTY INSURANCE COMPANY, a Delaware corporation; THE CINCINNATI INDEMNITY COMPANY, a Delaware corporation; LIBERTY MUTUAL FIRE INSURANCE COMPANY, a Wisconsin corporation; WAUSAU UNDERWRITERS INSURANCE COMPANY, a Wisconsin corporation; STARR SURPLUS LINES INSURANCE COMPANY, an Illinois corporation; ENDURANCE AMERICAN INSURANCE COMPANY, a Delaware corporation; PENNSYLVANIA LUMBERMENS MUTUAL INSURANCE COMPANY, a Pennsylvania corporation; FIRST MERCURY INSURANCE COMPANY, an Illinois corporation; CLARENDON NATIONAL INSURANCE COMPANY, as successor in interest by way of merger with Sussex Insurance Company fka as Companion Property and Casualty Insurance Company, a Texas corporation; FIRST SPECIALTY INSURANCE

Case No.

PLAINTIFF'S COMPLAINT FOR:

(1) DECLARATORY RELIEF;

(2) BREACH OF CONTRACT; AND

(3) BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING.

JURY DEMAND

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1 CORPORATION, a Missouri corporation;
 2 PELEUS INSURANCE COMPANY, a
 3 Virginia corporation; UNITED FIRE &
 4 CASUALTY COMPANY, an Iowa
 5 corporation; WESCO INSURANCE
 6 COMPANY, a Delaware corporation;
 7 TRAVELERS PROPERTY CASUALTY
 8 CO. OF AMERICA, a Connecticut
 9 corporation; THE TRAVELERS
 10 INDEMNITY COMPANY OF
 11 AMERICA, a Connecticut corporation;
 12 COLORADO CASUALTY INSURANCE
 13 COMPANY, a New Hampshire
 14 corporation; NATIONAL FIRE
 15 INSURANCE COMPANY OF
 16 HARTFORD, an Illinois corporation;
 17 BITCO NATIONAL INSURANCE
 18 COMPANY, an Illinois corporation;
 19 JAMES RIVER INSURANCE
 20 COMPANY, an Ohio corporation; NGM
 21 INSURANCE COMPANY, a Florida
 22 corporation; VALLEY FORGE
 23 INSURANCE COMPANY, a
 24 Pennsylvania corporation; ALLIED
 25 WORLD ASSURANCE COMPANY
 26 (US) INC., a Delaware corporation;
 27 TWIN CITY FIRE INSURANCE
 28 COMPANY, an Indiana corporation;
 29 SAFETY NATIONAL CASUALTY
 30 CORPORATION, a Missouri corporation;
 31 and QBE INSURANCE
 32 CORPORATION, a Pennsylvania
 33 corporation.

Defendants.

Plaintiff Pulte Home Company, LLC ("Plaintiff" or "Pulte"), on behalf of itself and as successor by conversion of Pulte Home Corporation, hereby alleges as follows:

PARTIES

1. At all times mentioned herein, Pulte Home Company was and is a Michigan limited liability corporation with its principal place of business in Atlanta, Georgia. Pulte Home Company, LLC is the successor by conversion of Pulte Home Corporation, a Michigan corporation.

2. Plaintiff is informed and believes, and on that basis alleges, that Midwest

1 Family Mutual Insurance Company (“Midwest Family”) is an Iowa corporation with its
2 principal place of business in Iowa.

3 3. Plaintiff is informed and believes, and on that basis alleges, that United
4 Specialty Insurance Company (“United Specialty”) is a Delaware corporation with its
5 principal place of business in Texas.

6 4. Plaintiff is informed and believes, and on that basis alleges, that Knight
7 Specialty Insurance Company (“KSIC”) is a Delaware corporation with its principal place
8 of business in California. United Specialty and KSIC are collectively referred to as
9 “USIC.”

10 5. Plaintiff is informed and believes, and on that basis alleges, that The
11 Cincinnati Specialty Underwriter Insurance Company (“Cincinnati”) is a Delaware
12 corporation with its principal place of business in Ohio.

13 6. Plaintiff is informed and believes, and on that basis alleges, that Liberty
14 Mutual Fire Insurance Company (“Liberty Mutual”) is a Wisconsin corporation with its
15 principal place of business in Massachusetts.

16 7. Plaintiff is informed and believes, and on that basis alleges, that Wausau
17 Underwriters Insurance Company (“Wausau”) is a Wisconsin corporation with its principal
18 place of business in Massachusetts.

19 8. Plaintiff is informed and believes, and on that basis alleges, that Starr
20 Surplus Lines Insurance Company (“Starr”) is an Illinois corporation with its principal
21 place of business in New York.

22 9. Plaintiff is informed and believes, and on that basis alleges, that Endurance
23 American Insurance Company (“Endurance”) is a Delaware corporation with its principal
24 place of business in New York.

25 10. Plaintiff is informed and believes, and on that basis alleges, that
26 Pennsylvania Lumbermens Mutual Insurance Company (“Pennsylvania”) is a
27 Pennsylvania corporation with its principal place of business in Pennsylvania.

28 11. Plaintiff is informed and believes, and on that basis alleges, that First

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1 Mercury Insurance Company (“FMIC”) is an Illinois corporation with its principal place of
2 business in New Jersey.

3 12. Plaintiff is informed and believes, and on that basis alleges, that James River
4 Insurance Company (“James River”) is an Ohio corporation with its principal place of
5 business in Virginia.

6 13. Plaintiff is informed and believes, and on that basis alleges, that Defendant
7 Clarendon National Insurance Company, as successor in interest by way of merger with
8 Sussex Insurance Company fka as Companion Property and Casualty Insurance Company
9 (“Clarendon”) at all times mentioned herein was and is a Texas corporation with its
10 principal place of business in New York.

11 14. Plaintiff is informed and believes, and on that basis alleges, that First
12 Specialty Insurance Corporation (“FSIC”) is a Missouri corporation with its principal place
13 of business in Missouri.

14 15. Plaintiff is informed and believes, and on that basis alleges, that Peleus
15 Insurance Company (“Peleus”) is a Virginia corporation with its principal place of
16 business in Virginia.

17 16. Plaintiff is informed and believes, and on that basis alleges, that United Fire
18 & Casualty Company (“United Fire”) is an Iowa corporation with its principal place of
19 business in Iowa.

20 17. Plaintiff is informed and believes, and on that basis, alleges that Wesco
21 Insurance Company (“Wesco”) is a Delaware corporation with its principal place of
22 business in New York.

23 18. Plaintiff is informed and believes, and on that basis, alleges that Defendants
24 Travelers Property Casualty Co. of America and The Travelers Indemnity Company of
25 America (collectively “Travelers”) are Connecticut corporations with their principal place
26 of business in Connecticut.

27 19. Plaintiff is informed and believes, and on that basis, alleges that Colorado
28 Casualty Insurance Company (“Colorado Casualty”) is a New Hampshire corporation with

1 its principal place of business in Massachusetts.

2 20. Plaintiff is informed and believes, and on that basis alleges, that National
3 Fire Insurance Company of Hartford (“National Fire”) is an Illinois corporation with its
4 principal place of business in Illinois.

5 21. Plaintiff is informed and believes, and on that basis alleges, that BITCO
6 National Insurance Company (“BITCO”) is an Illinois corporation with its principal place
7 of business in Iowa.

8 22. Plaintiff is informed and believes, and on that basis alleges, that NGM
9 Insurance Company (“NGM”) is a Florida corporation with its principal place of business
10 in Florida.

11 23. Plaintiff is informed and believes, and on that basis alleges, that Valley
12 Forge Insurance Company (“Valley Forge”) is a Pennsylvania corporation with its
13 principal place of business in Illinois.

14 24. Plaintiff is informed and believes, and on that basis alleges, that Allied
15 World Assurance Company (US) Inc. (“Allied”) is a Delaware corporation with its
16 principal place of business in New York.

17 25. Plaintiff is informed and believes, and on that basis alleges, that Twin City
18 Fire Insurance Company (“Twin City”) is an Indiana corporation with its principal place of
19 business in Connecticut.

20 26. Plaintiff is informed and believes, and on that basis alleges, that Safety
21 National Casualty Corporation (“Safety National”) is a Missouri corporation with its
22 principal place of business in Missouri.

23 27. Plaintiff is informed and believes, and on that basis alleges, that QBE
24 Insurance Corporation (“QBE”) is a Pennsylvania corporation with its principal place of
25 business in Wisconsin.

26 **JURISDICTION AND VENUE**

27 28. This Court has original jurisdiction over this action founded on diversity of
28 citizenship pursuant to 28 U.S.C. § 1332, because the matters in controversy exceed

\$75,000.00, exclusive of interest and costs, and because complete diversity exists between Plaintiff and Defendant.

GENERAL ALLEGATIONS

5 30. Plaintiff is a developer that participated in the development of two residential
6 communities: The Red Rock Village in Red Rock, Arizona (“Red Rock”), and the Sierra
7 Morado development in Tucson, Arizona (“Sierra Morado”) (collectively
8 “Developments”).
9

31. Plaintiff performed no work at the Developments; instead, Plaintiff's trade partners performed all of the work.

32. Certain Homeowners in each of the Developments asserted multiple
3 construction defect claims against Plaintiff (the “Underlying Claims”).

4 33. Plaintiff tendered each of the Underlying Claims to Defendants under one or
5 more commercial general liability insurance policies issued to one or more of Plaintiff's
6 trade partners who performed work for Plaintiff on the Developments.

The Trade Partners

3 34. American Woodmark Corp., dba Timberlake Cabinetry (“Timberlake”)
4 contracted with Pulte to, among other things, perform cabinetry work at one or more of the
5 Developments.

35. Brewer Enterprises (“Brewer”) contracted with Pulte to, among other things, perform plumbing work at one or more of the Developments.

36. Cascade Electric, Inc. (“Cascade Electric”) contracted with Pulte to, among
4 other things, perform electrical work at one or more of the Developments.

5 37. Chas Roberts Air Conditioning, Inc. (“Chas Roberts”) contracted with Pulte
6 to, among other things, perform heating, ventilation, and air-conditioning (“HVAC”) work
7 and install HVAC systems at one or more of the Developments.

38. Construction Specialties & Maintenance LLC (“CSM”) contracted with Pulte

1 to, among other things, perform painting work at one or more of the Developments.

2 39. Door Sales and Installation, aka Ericson Framing Operations, LLC, (“DSI”)
3 contracted with Pulte to, among other things, perform carpentry work at one or more of the
4 Developments.

5 40. Haskins Electric, LLC (“Haskins Electric”) contracted with Pulte to, among
6 other things, perform electrical work at one or more of the Developments.

7 41. Johnson Manley Lumber Company (“Johnson Manley”) contracted with
8 Pulte to, among other things, perform framing labor at one or more of the Developments.

9 42. Kaiser Garage Doors & Gates, Inc. (“Kaiser Garage”) contracted with Pulte
10 to, among other things, install garage door systems at one or more of the Developments.

11 43. Third Bench Holdings, LLC, as successor in interest to LL Industries, dba
12 Davis Kitchens, (“Davis Kitchens”) contracted with Pulte to, among other things, install
13 countertops at one or more of the Developments.

14 44. Metric Roofing (“Metric”) contracted with Pulte to, among other things,
15 perform roofing labor and install roofing systems at one or more of the Developments.

16 45. Paramount Windows (“Paramount”) contracted with Pulte to, among other
17 things, install window systems at one or more of the Developments.

18 46. Petersen Dean, Inc. (“Petersen Dean”) contracted with Pulte to, among other
19 things, perform roofing labor and install roofing systems at one or more of the
20 Developments.

21 47. Roadrunner Drywall Corp. (“Roadrunner”) contracted with Pulte to, among
22 other things, perform lathe/stucco work at one or more of the Developments.

23 48. Santa Rita Landscaping (“Santa Rita”) contracted with Pulte to, among other
24 things, perform grading and landscaping work at one or more of the Developments.

25 49. Southwest Concrete contracted with Pulte to, among other things, perform
26 foundation and flatwork labor at one or more of the Developments.

27 50. Stockett Tile & Granite Company (“Stockett”) contracted with Pulte to,
28 among other things, install countertops at one or more of the Developments.

1 51. Tucson Plumbing contracted with Pulte to, among other things, install
 2 plumbing at one or more of the Developments.

3 52. Valley Wide Plastering Construction, Inc. (“Valley Wide”) contracted with
 4 Pulte to, among other things, perform plumbing work at one or more of the Developments.

5 53. Window Products, Inc., dba Cascade Windows (“Cascade Windows”)
 6 contracted with Pulte to, among other things, install window systems at one or more of the
 7 Developments.

8 54. XO Windows, LLC (“XO Windows”) contracted with Pulte to, among other
 9 things, install window systems at one or more of the Developments.

10 55. Timberlake, Brewer, Cascade Electric, Chas Roberts, CSM, DSI, Haskins
 11 Electric, Johnson Manley, Kaiser Garage, Davis Kitchens, Metric, Paramount, Petersen
 12 Dean, Roadrunner, Santa Rita, Southwest, Stockett, Tucson Plumbing, Valley Wide,
 13 Cascade Windows, and XO Windows are collectively referred to as the “Contractors.”

14 **The Contracts**

15 56. The Contractors entered into certain written contracts with Pulte
 16 (collectively, the “Contracts”) relating to, among other things, their work at the
 17 Developments.

18 57. Pursuant to the Contracts, the Contractors promised to carry and continue to
 19 carry certain insurance coverages continuously during the life of the Contract, including
 20 but not limited to commercial general liability insurance naming Plaintiff as an “additional
 21 insured”.

22 58. The Contracts require the Contractors to maintain commercial general
 23 liability insurance with minimum limits of \$1,000,000 combined single limit per
 24 occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations
 25 aggregate, and to name Pulte and its affiliates as additional insureds under those insurance
 26 policies.

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The Midwest Family Policies

59. Midwest Family issued the following commercial general liability policies to Brewer Enterprises (“the Midwest Family Policies”):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
Brewer	ACAZ0560102873	09/24/15-09/24/21	Abercrombie Affeld Anderson

60. The Midwest Family Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of Brewer’s work or operations.

61. The coverage afforded under the Midwest Family Policies requires Defendant Midwest Family to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of Brewer’s work or operations.

The USIC Policies

62. USIC issued the following commercial general liability policies to Cascade Electric, DSI, Haskins Electric, Johnson Manley, Metric, Paramount, Petersen Dean, Roadrunner, Santa Rita, Southwest Concrete, Tucson Plumbing, Valley Wide, and XO Windows (“the USIC Policies”):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
Cascade Electric	KSVENA 160057600 BVO1614079 ATN-ATL1720337 ATN-ATL1831210 ATN-ATL1944477 ATN-ATL2056230 ATL2168010	05/03/16-08/04/16 08/04/16-05/03/17 05/03/17-05/03/18 05/03/18-05/03/19 05/03/19-05/03/20 05/03/20-05/03/21 05/03/21-05/03/22	Albin Burton
DSI	BTO 1517927 BTO 1628990 ATNSF 1731197 ATNSF 1843327	09/16/15-10/31/16 10/31/16-10/31/17 10/31/17-10/31/18 10/31/18-10/31/20	Anderson Burton
Haskins Electric	BTO 1316191 BTO 1426956	07/01/13-07/01/14 07/01/14-07/01/15	Abercrombie Affeld Albin

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Named Insured	Policy Number	Policy Period	Underlying Claim(s)
	KSVENS151128002 BTO 1648383 ATN-SF1750764	07/01/15-07/01/16 07/01/16-07/01/17 07/01/17-07/01/18	Anderson Burton
Johnson Manley	BTO1436824 KSVENS151117104 KSVENS161163305	05/01/14-05/01/15 05/01/15-05/01/16 05/01/16-05/01/17	Abercrombie Affeld Albin Anderson Burton
Metric	BVO 1432778 BVO 1543411 BVO 1653638 ATNATL 1760349 ATNATL 1871215 ATNATL 1984446 ATNATL 1984446 00102622-0	05/01/14-05/01/15 05/01/15-05/01/16 05/01/16-05/01/17 05/01/17-05/01/18 05/01/18-05/01/19 05/01/19-05/01/20 05/01/20-05/01/21 05/01/21-05/01/22	Abercrombie Affeld Albin Anderson Burton
Paramount	BVO 1472560	01/01/14-01/01/15	Affeld Albin Anderson
Petersen Dean	BTO1316098 BTO1426809 BTO1537673	04/30/13-04/30/14 04/30/14-04/30/15 04/30/15-04/30/16	Albin
Roadrunner	BVO 1412654 BVO 1523328 BVO 1633607 ATN-ATL 1740176 ATN-ATL 1851033 ATN-ATL 1964037 ATN 2075942 ATN 2187616	02/26/14-02/26/15 02/26/15-02/26/16 02/26/16-02/26/17 02/26/17-02/26/18 02/26/18-02/26/19 02/26/19-02/26/20 02/26/20-02/26/21 02/26/21-02/26/22	Abercrombie Affeld Albin Anderson Burton
Santa Rita	ATN 2016122 ATN 2127830	04/01/20-04/01/21 04/01/21-04/01/22	Burton
Southwest Concrete	KSVENA 160048400 ATN-ATL 1720208 ATN-ATL 1831097 ATN-ATL 1944062 ATN 2056046 ATN 2167759 ATN 2271581	03/23/16-03/23/17 03/23/17-03/23/18 03/23/18-03/23/19 03/23/19-03/23/20 03/23/20-03/23/21 03/23/21-03/23/22 03/23/22-03/23/23	Abercrombie Affeld Albin Anderson Burton
Tucson Plumbing	BVO 1513191 BVO 1623564 ATN-ATL 1730028	01/01/15-01/01/16 01/01/16-01/01/17 01/01/17-01/01/18	Abercrombie Affeld Albin

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
	ATN-ATL 1840874 ATN-ATL 1951769 ATN 2065555	01/01/18-01/01/19 01/01/19-01/01/20 01/01/20-01/01/21	Anderson Burton
Valley Wide	KSVENS 151116700 ATN-SF 1730547 ATN-SF 1841803 ATN-SF 1954406 ATN 2066270	05/01/15-05/01/17 05/01/17-05/01/18 05/01/18-05/01/19 05/01/19-05/01/20 05/01/20-05/01/22	Abercrombie Affeld Albin Anderson Burton
XO Windows	TWG 42000820 BVO 1533210 BVO 1643568 ATN-ATL 1750053 ATN-ATL 860909 ATN-ATL 1961771 ATN 2075576 ATN 2187350	03/25/11-03/25/12 02/01/15-02/01/16 02/01/16-02/01/17 02/01/17-02/01/18 02/01/18-02/01/19 02/01/19-02/01/20 02/01/20-02/01/21 02/01/21-02/01/22	Abercrombie Affeld Albin Anderson Burton

63. The USIC Policies were endorsed to cover Pulte an “additional insured” with respect to liability arising out of Cascade Electric’s, DSI’s, Haskins Electric’s, Johnson Manley’s, Metric’s, Paramount’s, Petersen Dean’s, Roadrunner’s, Santa Rita’s, Southwest Concrete’s, Tucson Plumbing’s, Valley Wide’s, and XO Windows’s respective work or operations.

64. The coverage afforded under the USIC Policies requires Defendant USIC to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of Cascade Electric’s, DSI’s, Haskins Electric’s, Johnson Manley’s, Metric’s, Paramount’s, Petersen Dean’s, Roadrunner’s, Santa Rita’s, Southwest Concrete’s, Tucson Plumbing’s, Valley Wide’s, and XO Windows’s work or operations.

The Cincinnati Policy

65. Cincinnati issued the following commercial general liability policy to Chas Roberts (“the Cincinnati Policy”):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
Chas Roberts	CSU 0165654	04/01/21-04/01/22	Abercrombie Burton

66. The Cincinnati Policy was endorsed to cover Pulte as an “additional insured” with respect to liability arising out of Chas Roberts’ work or operations.

67. The coverage afforded under the Cincinnati Policy requires Defendant Cincinnati to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of Chas Roberts’ work or operations.

The Liberty Mutual Policies

68. Liberty Mutual issued the following commercial general liability policies to Chas Roberts and Cascade Windows (“the Liberty Mutual Policies”):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
Chas Roberts	TBJZ91451614023	04/01/13-04/01/14	Abercrombie Affeld Albin Anderson Burton
	TB2Z91451614024	04/01/14-04/01/15	
	TB2Z91451614025	04/01/15-04/01/16	
	TB2Z91451614026	04/01/16-04/01/17	
	TB2Z91451614027	04/01/17-04/01/18	
	TB2Z91451614028	04/01/18-04/01/19	
	TB2Z91451614029	04/01/19-04/01/20	
	TB2Z91451614020	04/01/20-04/01/21	
Cascade Windows	TB6Z91461736036	11/16/16-11/16/17	Abercrombie Affeld Albin Anderson Burton
	TB6Z91461736037	11/16/17-06/30/18	
	TB2Z91461736128	06/30/18-06/30/19	
	TB2Z91461736129	06/30/19-06/30/20	

69. The Liberty Mutual Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of Chas Roberts’ and Cascade Windows’ work or operations.

70. The coverage afforded under the Liberty Mutual Policies requires Defendant Liberty Mutual to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily

1 injury arising out of Chas Roberts' and Cascade Windows' work or operations.

2 **The Wausau Policy**

3 71. Wausau issued the following commercial general liability policy to Chas
4 Roberts ("the Wausau Policy"):

5 Named Insured	6 Policy Number	7 Policy Period	8 Underlying Claim(s)
9 Chas Roberts	10 CBF100000188100	11 10/02/17-10/02/19	12 Abercrombie 13 Affeld

14 72. The Wausau Policy was endorsed to cover Pulte as an "additional insured" with
15 respect to liability arising out of Chas Roberts' work or operations.

16 73. The coverage afforded under the Wausau Policy requires Defendant Wausau
17 to defend and indemnify Pulte against all claims that allege (duty to defend) and result in
18 (duty to indemnify) liability for covered property damage or bodily injury arising out of
19 Chas Roberts' work or operations.

20 **The Starr Policy**

21 74. Starr issued the following commercial general liability policy to CSM ("the
22 Starr Policy"):

23 Named Insured	24 Policy Number	25 Policy Period	26 Underlying Claim(s)
27 CSM	28 SLPLGGL0290100	29 10/02/14-10/02/15	30 Abercrombie 31 Affeld 32 Albin 33 Anderson 34 Burton

35 75. The Starr Policy was endorsed to cover Pulte as an "additional insured" with
36 respect to liability arising out of CSM's work or operations.

37 76. The coverage afforded under the Starr Policy requires Defendant Starr to
38 defend and indemnify Pulte against all claims that allege (duty to defend) and result in
39 (duty to indemnify) liability for covered property damage or bodily injury arising out of
40 CSM's work or operations.

41 / / /

1 **The Endurance Policies**

2 77. Endurance issued the following commercial general liability policies to CSM
 3 (“the Endurance Policies”):

4 Named Insured	5 Policy Number	6 Policy Period	7 Underlying 8 Claim(s)
9 CSM	10 CBF 10000188100 11 CBF 10000188101	12 10/02/17-10/02/18 13 10/02/18-10/02/19	14 Albin 15 Abercrombie 16 Affeld 17 Anderson 18 Burton

19 78. The Endurance Policies were endorsed to cover Pulte as an “additional
 20 insured” with respect to liability arising out of CSM’s work or operations.

21 79. The coverage afforded under the Endurance Policies requires Defendant
 22 Endurance to defend and indemnify Pulte against all claims that allege (duty to defend)
 23 and result in (duty to indemnify) liability for covered property damage or bodily injury
 24 arising out of CSM’s work or operations.

25 **The Pennsylvania Policies**

26 80. Pennsylvania issued the following commercial general liability policies to
 27 Davis Kitchens (“the Pennsylvania Policies”):

28 Named Insured	29 Policy Number	30 Policy Period	31 Underlying 32 Claim(s)
33 Davis Kitchens	34 02-L003-01-19 35 02-L003-01-20	36 03/16/19-03/16/20 37 03/16/20-03/16/21	38 Abercrombie 39 Anderson 40 Burton

41 81. The Pennsylvania Policies were endorsed to cover Pulte as an “additional
 42 insured” with respect to liability arising out of Davis Kitchens’ work or operations.

43 82. The coverage afforded under the Pennsylvania Policies requires Defendant
 44 Pennsylvania to defend and indemnify Pulte against all claims that allege (duty to defend)
 45 and result in (duty to indemnify) liability for covered property damage or bodily injury
 46 arising out of Davis Kitchens’ work or operations.

47 ///

1 **The FMIC Policies**

2 83. FMIC issued commercial general liability policies to DSI, Roadrunner, and
3 Valley Wide (“the FMIC Policies”):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
DSI	NJ-CGL-0000035456-01 WA-CGL-0000048895-01	10/31/13-10/31/14 10/31/14-10/31/15	Burton
Roadrunner	MACGL000000642401 MACGL000000642402	02/26/12-02/26/13 02/26/13-02/26/14	Abercrombie Affeld Albin Anderson
Valley Wide	FMMA 004482 MACGL000001037201	05/01/11-05/01/12 05/01/12-05/01/13	Abercrombie Affeld

11 84. The FMIC Policies were endorsed to cover Pulte as an “additional insured”
12 with respect to liability arising out of DSI’s, Roadrunner’s, and Valley Wide’s work or
13 operations.

14 85. The coverage afforded under the FMIC Policies requires Defendant FMIC to
15 defend and indemnify Pulte against all claims that allege (duty to defend) and result in
16 (duty to indemnify) liability for covered property damage or bodily injury arising out of
17 DSI’s, Roadrunner’s, and Valley Wide’s work or operations.

18 **The Companion Policies**

19 86. Companion issued the following commercial general liability policies to
20 Johnson Manley, Metric, and Paramount (“the Companion Policies”):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
Johnson Manley	VJB 1115600	05/01/12-05/01/14	Abercrombie Albin Anderson
Metric	VGL 1111640 VGL 1322178	05/01/12-05/01/13 05/01/13-05/01/14	Abercrombie Affeld Albin Anderson Burton

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
Paramount	VGL 1041239 VGL 1151659 VGL 1362200	05/20/11-05/20/12 05/20/12-05/20/13 05/20/13-05/20/14	Abercrombie Affeld Albin Anderson Burton

87. The Companion Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of Johnson Manley’s, Metric’s, and Paramount’s work or operations.

88. The coverage afforded under the Companion Policies requires Defendant Companion to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of Johnson Manley’s, Metric’s, and Paramount’s work or operations.

The FSIC Policies

89. FSIC issued the following commercial general liability policies to Johnson Manley and Valley Wide (“the FSIC Policies”):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
Johnson Manley	IRG 57027-5 IRG 57027-6 IRG 57027-8	07/01/10-07/01/11 07/01/11-07/01/12 07/01/13-07/01/14	Abercrombie Albin Anderson Burton
Valley Wide	IRG 200119700	05/01/13-05/01/15	Abercrombie Affeld Albin Anderson Burton

90. The FSIC Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of Johnson Manley’s and Valley Wide’s work or operations.

91. The coverage afforded under the FSIC Policies requires Defendant FSIC to defend and indemnify Pulte against all claims that allege (duty to defend) and result in

1 (duty to indemnify) liability for covered property damage or bodily injury arising out of
 2 Johnson Manley's and Valley Wide's work or operations.

3 **The United Fire Policy**

4 92. United Fire issued the following commercial general liability policy to
 5 Kaiser Garage ("the United Fire Policy"):

6 Named Insured	7 Policy Number	8 Policy Period	9 Underlying Claim(s)
Kaiser Garage	60424468	01/01/13-01/01/15	Abercrombie

10 93. The United Fire Policy was endorsed to cover Pulte as an "additional
 11 insured" with respect to liability arising out of Kaiser Garage's work or operations.

12 94. The coverage afforded under the United Fire Policy requires Defendant
 13 United Fire to defend and indemnify Pulte against all claims that allege (duty to defend)
 14 and result in (duty to indemnify) liability for covered property damage or bodily injury
 15 arising out of Kaiser Garage's work or operations.

16 **The Wesco Policies**

17 95. Wesco issued the following commercial general liability policies to Kaiser
 18 Garage ("the Wesco Policies"):

19 Named Insured	20 Policy Number	21 Policy Period	22 Underlying Claim(s)
Kaiser Garage	WPP1427351 00	01/01/16-01/01/17	Abercrombie
	WPP1427351 01	01/01/17-01/01/18	Burton
	WPP1427351 02	01/01/18-01/01/19	

23 96. The Wesco Policies were endorsed to cover Pulte an "additional insured"
 24 with respect to liability arising out of Kaiser Garage's work or operations.

25 97. The coverage afforded under the Wesco Policies requires Defendant Wesco
 26 to defend and indemnify Pulte against all claims that allege (duty to defend) and result in
 27 (duty to indemnify) liability for covered property damage or bodily injury arising out of
 28 Kaiser Garage's work or operations.

29 ///

The Travelers Policies

98. Travelers issued commercial general liability policies to Kaiser Garage (“the Travelers Policies”):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
Kaiser Garage	Y-630-4E939854-TIL-14	05/01/14-01/01/15	Abercrombie Burton
	Y-630-4E939854-TIL-15	01/01/15-01/01/16	
	810-3P998711-20-14-G	01/01/20-01/01/21	

99. The Travelers Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of Kaiser Garage’s work or operations.

100. The coverage afforded under the Travelers Policies requires Defendant Travelers to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of Kaiser Garage’s work or operations.

The Colorado Casualty Policies

101. Colorado Casualty issued the following commercial general liability policy to Paramount (“the Colorado Casualty Policy”):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
Paramount	CPB8908304	02/06/12-01/01/14	Abercrombie Affeld Albin

102. The Colorado Casualty Policy was endorsed to cover Pulte as an “additional insured” with respect to liability arising out of Paramount’s work or operations.

103. The coverage afforded under the Colorado Casualty Policy requires Defendant Colorado Casualty to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of Paramount’s work or operations.

The National Fire Policy

104. National Fire issued the following commercial general liability policy to

1 Santa Rita (“the National Fire Policy”):

2 Named Insured	3 Policy Number	4 Policy Period	Underlying Claim(s)
3 Santa Rita	4 5091515036	5 03/01/13-03/01/15	Abercrombie Affeld

5 105. The National Fire Policy was endorsed to cover Pulte as an “additional
6 insured” with respect to liability arising out of Santa Rita’s work or operations.

7 106. The coverage afforded under the National Fire Policy requires Defendant
8 National Fire to defend and indemnify Pulte against all claims that allege (duty to defend)
9 and result in (duty to indemnify) liability for covered property damage or bodily injury
10 arising out of Santa Rita’s work or operations.

11 **The BITCO Policies**

12 107. BITCO issued the following commercial general liability policies to Santa
13 Rita (“the BITCO Policies”):

14 Named Insured	15 Policy Number	16 Policy Period	Underlying Claim(s)
15 Santa Rita	16 CLP3616945	17 03/01/15-03/01/16	Abercrombie
	CLP3634099	03/01/16-03/01/17	Affeld
	CLP3646770B	03/01/17-03/01/18	Anderson
	CLP3650987	03/01/18-03/01/19	Burton

18 108. The BITCO Policies were endorsed to cover Pulte as an “additional insured”
19 with respect to liability arising out of Santa Rita’s work or operations.

20 109. The coverage afforded under the BITCO Policies requires Defendant BITCO
21 to defend and indemnify Pulte against all claims that allege (duty to defend) and result in
22 (duty to indemnify) liability for covered property damage or bodily injury arising out of
23 Santa Rita’s work or operations.

24 **The James River Policies**

25 110. James River issued the following commercial general liability policies to
26 DSI and Santa Rita (“the James River Policies”):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
DSI	968560	10/31/20-10/31/21	Burton
	968561	10/31/21-10/31/22	
Santa Rita	632452242	03/01/19-03/01/20	Abercrombie

111. The James River Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of DSI’s and Santa Rita’s work or operations.

112. The coverage afforded under the James River Policies requires Defendant James River to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of DSI’s and Santa Rita’s work or operations.

The NGM Policies

113. NGM issued the following commercial general liability policies to Southwest Concrete, Stockett, and Tucson Plumbing (“the NGM Policies”):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
Southwest Concrete	MPG4974B	03/26/10-03/26/11	Abercrombie Affeld Albin Anderson Burton
	MPG4974B-11	03/23/11-03/23/12	
	MPG4974B-12	03/23/12-03/23/13	
	MPG4974B-13	03/23/13-03/23/14	
	MPG4974B	03/23/14-03/23/15	
	MPG4974B	03/20/15-03/23/16	
Stockett	MPG 8067C	04/01/11-04/01/12	Anderson Burton
	MPI 5035Z	04/01/11-04/01/16	
Tucson Plumbing	MPG 3221C-12	01/01/12-01/01/13	Abercrombie Affeld Albin Anderson Burton
	MPG 3221C-13	01/01/13-01/01/14	
	MPG 3221C	01/01/14-01/01/15	

114. The NGM Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of Southwest Concrete’s, Stockett’s, and Tucson Plumbing’s work or operations.

115. The coverage afforded under the NGM Policies requires Defendant NGM to defend and indemnify Pulte against all claims that allege (duty to defend) and result in

1 (duty to indemnify) liability for covered property damage or bodily injury arising out of
 2 Southwest Concrete's, Stockett's, and Tucson Plumbing's work or operations.

The Valley Forge Policy

4 116. Valley Forge issued the following commercial general liability policy to
 5 Stockett ("the Valley Forge Policy"):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
Stockett	6024467189	04/01/16-04/01/18	Abercrombie Anderson Burton

9 117. The Valley Forge Policy was endorsed to cover Pulte as an "additional
 10 insured" with respect to liability arising out of Stockett's work or operations.

11 118. The coverage afforded under the Valley Forge Policy requires Defendant
 12 Valley Forge to defend and indemnify Pulte against all claims that allege (duty to defend)
 13 and result in (duty to indemnify) liability for covered property damage or bodily injury
 14 arising out of Stockett's work or operations.

The Allied Policy

16 119. Allied issued commercial general liability policy to Timberlake ("the Allied
 17 Policy"):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
Timberlake	3100209	03/01/16-03/01/17	Anderson Burton

22 120. The Allied Policy was endorsed to cover Pulte as an "additional insured"
 23 with respect to liability arising out of Timberlake's work or operations.

24 121. The coverage afforded under the Allied Policy requires Defendant Allied to
 25 defend and indemnify Pulte against all claims that allege (duty to defend) and result in
 26 (duty to indemnify) liability for covered property damage or bodily injury arising out of
 27 Timberlake's work or operations.

28 / / /

1 **The Twin City Policy**

2 122. Twin City issued commercial general liability policy to Timberlake (“the
3 Twin City Policy”):

4 Named Insured	5 Policy Number	6 Policy Period	7 Underlying Claim(s)
8 Timberlake	9 14 ECS S56202	10 03/01/17-03/01/20	11 Anderson Burton

12 123. The Twin City Policy was endorsed to cover Pulte as an “additional insured”
13 with respect to liability arising out of Timberlake’s work or operations.

14 124. The coverage afforded under the Twin City Policy requires Defendant Twin
15 City to defend and indemnify Pulte against all claims that allege (duty to defend) and result
16 in (duty to indemnify) liability for covered property damage or bodily injury arising out of
17 Timberlake’s work or operations.

18 **The Safety National Policy**

19 125. Safety National issued the following commercial general liability policy to
20 Timberlake (“the Safety National Policy”):

21 Named Insured	22 Policy Number	23 Policy Period	24 Underlying Claim(s)
25 Timberlake	26 GL 4062742	27 03/01/20-03/01/21	28 Abercrombie Anderson Burton

29 126. The Safety National Policy was endorsed to cover Pulte as an “additional
30 insured” with respect to liability arising out of Timberlake’s work or operations.

31 127. The coverage afforded under the Safety National Policy requires Defendant
32 Safety National to defend and indemnify Pulte against all claims that allege (duty to
33 defend) and result in (duty to indemnify) liability for covered property damage or bodily
34 injury arising out of Timberlake’s work or operations.

35 **The QBE Policy**

36 128. QBE issued the following commercial general liability policy to Timberlake
37 (“the QBE Policy”):

Named Insured	Policy Number	Policy Period	Underlying Claim(s)
Timberlake	CGA3971209	03/01/14-03/01/16	Anderson Burton

129. The QBE Policy was endorsed to cover Pulte as an “additional insured” with
 respect to liability arising out of Timberlake’s work or operations.

130. The coverage afforded under the QBE Policy requires Defendant QBE to
 defend and indemnify Pulte against all claims that allege (duty to defend) and result in
 (duty to indemnify) liability for covered property damage or bodily injury arising out of
 Timberlake’s work or operations.

10 **THE UNDERLYING CLAIMS**

131. Between 2020 and 2022, certain homeowners in the Developments asserted a
 number of claims alleging, among other things, that Pulte was responsible for a variety of
 construction defects and property damage in certain homes in the Developments. The
 Underlying Claims, are as follows:

15 **The Abercrombie Claim**

16 132. On or about November 30, 2021, certain homeowners in Red Rock filed a
 17 construction defect arbitration demand entitled *Abercrombie, et al. v. Pulte Home*
 18 *Corporation*, American Arbitration Association (“AAA”) Case No. 01-21-0017-6813 (the
 19 “*Abercrombie Claim
 20 Rock contained defective and negligent construction, that those defects caused damages
 21 for which Pulte is liable.*

22 133. The *Abercrombie Claim* sought damages from Pulte because of property
 23 damage arising out of the work of various contractors, including Brewer, Cascade
 24 Windows, Chas Roberts, CSM, Davis Kitchens, Haskins Electric, Johnson Manley, Kaiser
 25 Garage, Metric, Paramount, Roadrunner, Santa Rita, Southwest Concrete, Stockett,
 26 Timberlake, Tucson Plumbing, Valley Wide, and XO Windows.

27 134. The damages sought in the *Abercrombie Claim* were the type of damages for
 28 which the contractors were contractually obligated to provide additional insured coverage

1 to Pulte. Therefore, Pulte is entitled to coverage under one or more policies issued by
 2 Amerisure, BITCO, Cincinnati, Colorado Casualty, Companion, Endurance, FMIC, FSIC,
 3 James River, Liberty Mutual, Midwest Family, National Fire, NGM, Peleus, Pennsylvania,
 4 Safety National, Starr, Travelers, United Fire, USIC, Valley Forge, Wausau, and Wesco.
 5 Specifically, those alleged damages were damages because of property damage, the
 6 damages were caused by an occurrence (i.e., the contractors' negligent work), and the
 7 damages occurred during the policy periods.

8 135. As a result of the *Abercrombie* Claim, Pulte has incurred and will continue to
 9 incur significant costs, including, but not limited to, forensic, investigative, and repair
 10 costs, attorneys' fees and other expenses.

11 136. Pulte tendered its defense and indemnity of the *Abercrombie* Claim to each
 12 of the Defendants under the insurance policies listed herein.

13 137. USIC agreed to participate in Pulte's defense under the policies it issued to
 14 Southwest Concrete and Tucson Plumbing. Peleus agreed to participate in in Pulte's
 15 defense under the policies it issued to Tucson Plumbing. USIC and Peleus are referred to
 16 herein as the "*Abercrombie* Participating Insurers" as to Pulte's claims arising out of these
 17 policies only.

18 138. Pursuant to the insurance policies issued by the Defendants to their
 19 respective named-insured contractors and Pulte's additional insured status, as specified
 20 herein, the Defendants owe a duty to pay all of the defense fees and costs that Pulte
 21 incurred and will continue to incur in defending against the *Abercrombie* Claim.

22 139. Pursuant to the insurance policies issued by the Defendants to their
 23 respective named-insured contractors and Pulte's additional insured status, as specified
 24 herein, the Defendants have a duty to indemnify Pulte for any liability Pulte incurs as a
 25 result of the *Abercrombie* Claim for property damage that arises out of and/or that is
 26 caused in whole or in part by the Defendants' respective named insured contractors' work.

27 140. The Defendants breached their duties by refusing to defend Pulte, or in the
 28 case of the *Abercrombie* Participating Insurers, failing to fully defend Pulte. On

1 information and belief, Defendants misrepresented policy provisions and/or material facts
 2 related to coverage, failed to make prompt payment of Pulte's demands for reimbursement
 3 of its defense costs, and/or otherwise failed to respond to Pulte's tender of its defense of
 4 the *Abercrombie* Claim. As a result of Defendants' conduct, Pulte has been forced to
 5 expend significant resources defending itself against the *Abercrombie* Claim. As of the
 6 date of the filing of this Complaint, Pulte has incurred more than \$132,512.05 in attorneys'
 7 fees and costs defending against the *Abercrombie* Claim, and will continue to incur
 8 significant expenses defending against the *Abercrombie* Claim, which is ongoing. To date,
 9 Pulte has only been reimbursed for \$55,952.38 of its incurred attorneys' fees and costs,
 10 leaving a balance to date of \$76,559.68.

11 141. Upon information and belief, the Defendants failed to investigate or timely
 12 respond to Pulte's tender of defense and indemnity, if they responded at all.

13 142. Upon information and belief, the Defendants failed to consider the
 14 allegations in the pleadings, facts provided by Pulte, or facts easily discernable.

15 143. Pleading further and in the alternative, in addition to these specific
 16 allegations based on insurance policy endorsements directly adding Pulte as an additional
 17 insured to each policy issued by the Defendants and listed herein, each policy listed herein
 18 above contained a provision or provisions the effect of which is to allow Pulte to stand in
 19 the shoes of the Defendants' named-insured contractors for purposes of coverage.

20 144. The above is not an exclusive list of the Defendants' potential liability to
 21 Pulte as other theories of potential coverage and recovery may be apparent based on the
 22 specific policies and/or specific actions of each Defendant.

23 **The Affeld Claim**

24 145. On or about April 15, 2020, certain homeowners in Red Rock Village filed a
 25 construction defect arbitration demand entitled *Affeld, et al., v. Pulte Home Corporation*
 26 (the "Affeld Claim"), against Pulte alleging, among other things, that certain homes in Red
 27 Rock contained defective construction, that those defects caused damages for which Pulte
 28 is liable.

1 146. The *Affeld* Claim sought damages from Pulte because of property damage
 2 arising out of the work of various contractors, including Brewer, Cascade Windows, Chas
 3 Roberts, CSM, Haskins Electric, Johnson Manley, Metric, Paramount, Roadrunner, Santa
 4 Rita, Southwest Concrete, Tucson Plumbing, Valley Wide, and XO Windows.

5 147. The damages sought in the *Affeld* Claim were the type of damages for which
 6 the contractors were contractually obligated to provide additional insured coverage to
 7 Pulte. Therefore, Pulte is entitled to coverage under one or more policies issued by
 8 BITCO, Colorado Casualty, Companion, Endurance, FMIC, FSIC, Liberty Mutual,
 9 Midwest Family, National Fire, NGM, Peleus, Starr, USIC, and Wausau. Specifically,
 10 those alleged damages were damages because of property damage, the damages were
 11 caused by an occurrence (i.e., the contractors' negligent work), and the damages occurred
 12 during the policy periods.

13 148. As a result of the *Affeld* Claim, Pulte has incurred and will continue to incur
 14 significant costs, including, but not limited to, forensic, investigative, and repair costs,
 15 attorneys' fees and other expenses.

16 149. Pulte tendered its defense and indemnity of the *Affeld* Claim to each of the
 17 Defendants under the insurance policies listed herein.

18 150. USIC agreed to participate in Pulte's defense under the policies it issued to
 19 Roadrunner and Valley Wide. Peleus agreed to participate in Pulte's defense under the
 20 policies it issued to Johnson Manley. USIC and Peleus referred to herein as the "*Affeld*
 21 Participating Insurers" as to Pulte's claims arising out of these policies only.

22 151. Pursuant to the insurance policies issued by the Defendants to their
 23 respective named-insured contractors and Pulte's additional insured status, as specified
 24 herein, the Defendants owe a duty to pay all of the defense fees and costs that Pulte
 25 incurred and will continue to incur in defending against the *Affeld* Claim.

26 152. Pursuant to the insurance policies issued by the Defendants to their
 27 respective named-insured contractors and Pulte's additional insured status, as specified
 28 herein, the Defendants have a duty to indemnify Pulte for any liability Pulte incurs as a

1 result of the *Affeld* Claim for property damage that arises out of and/or that is caused in
 2 whole or in part by the Defendants' respective named insured contractors' work.

3 153. The Defendants breached their duties by refusing to defend Pulte, or in the
 4 case of the *Affeld* Participating Insurers, failing to fully defend Pulte. On information and
 5 belief, Defendants misrepresented policy provisions and/or material facts related to
 6 coverage, failed to make prompt payment of Pulte's demands for reimbursement of its
 7 defense costs, and/or otherwise failed to respond to Pulte's tender of its defense of the
 8 *Affeld* Claim. As a result of Defendants' conduct, Pulte has been forced to expend
 9 significant resources defending itself against the *Affeld* Claim. As of the date of the filing
 10 of this Complaint, Pulte has incurred more than \$237,370.03 in attorneys' fees and costs
 11 defending against the *Affeld* Claim, and will continue to incur significant expenses
 12 defending against the *Affeld* Claim, which is ongoing. To date, Pulte has only been
 13 reimbursed for \$187,550.54 of its incurred attorneys' fees and costs, leaving a balance to
 14 date of \$49,819.49.

15 154. Upon information and belief, the Defendants failed to investigate or timely
 16 respond to Pulte's tender of defense and indemnity, if they responded at all.

17 155. Upon information and belief, the Defendants failed to consider the
 18 allegations in the pleadings, facts provided by Pulte, or facts easily discernable.

19 156. Pleading further and in the alternative, in addition to these specific
 20 allegations based on insurance policy endorsements directly adding Pulte as an additional
 21 insured to each policy issued by the Defendants and listed herein, each policy listed herein
 22 above contained a provision or provisions the effect of which is to allow Pulte to stand in
 23 the shoes of the Defendants' named-insured contractors for purposes of coverage.

24 157. The above is not an exclusive list of the Defendants' potential liability to
 25 Pulte as other theories of potential coverage and recovery may be apparent based on the
 26 specific policies and/or specific actions of each Defendant.

27 **The Albin Claim**

28 158. On or about March 19, 2021, certain homeowners in Sierra Morado

1 development filed an arbitration demand entitled *Albin, et al. v. Pulte Home Corporation,*
2 *et al.* (the “*Albin* Claim”), against Pulte alleging, among other things, that certain homes in
3 Sierra Morado contained defective and negligent construction, that these defects caused
4 damages that for which Pulte is liable.

5 159. The *Albin* Claim sought damages from Pulte because of property damage
6 arising out of the work of various contractors, including Cascade Electric, Cascade
7 Windows, Chas Roberts, CSM, Haskins Electric, Johnson Manley, Metric, Paramount,
8 Roadrunner, Southwest Concrete, Tucson Plumbing, Valley Wide, and XO Windows.

9 160. The damages sought in the *Albin* Claim were the type of damages for which
10 the contractors were contractually obligated to provide additional insured coverage to
11 Pulte. Therefore, Pulte is entitled to coverage under one or more policies issued by
12 Colorado Casualty, Companion, Endurance, FMIC, FSIC, Liberty Mutual, NGM, Peleus,
13 Starr, and USIC. Specifically, those alleged damages were damages because of property
14 damage, the damages were caused by an occurrence (i.e., the contractors’ negligent work),
15 and the damages occurred during the policy periods.

16 161. Pulte settled with the homeowners in the *Albin* Claim. As a result of the
17 claims alleged in the *Albin* Claim, Pulte incurred significant costs, including, but not
18 limited to, forensic, investigative, and repair costs, attorneys’ fees and other expenses.

19 162. Pulte tendered its defense and indemnity of the *Albin* Claim to each of the
20 Defendants under the insurance policies listed herein.

21 163. Peleus agreed to participate in Pulte’s defense under the policies it issued to
22 Johnson Manley. USIC agreed to participate in Pulte’s defense under the policies it issued
23 to Cascade Electric, Haskins Electric, Johnson Manley, Metric, Paramount, Roadrunner,
24 Southwest Concrete, Tucson Plumbing, Valley Wide, and XO Windows. USIC and Peleus
25 are referred to herein as the “*Albin* Participating Insurers” as to Pulte’s claims arising out
26 of these policies only.

27 164. Pursuant to the insurance policies issued by the Defendants to their
28 respective named-insured contractors and Pulte’s additional insured status, as specified

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1 herein, the Defendants owe a duty to pay all of the defense fees and costs that Pulte
 2 incurred in defending against the *Albin* Claim.

3 165. Pursuant to the insurance policies issued by the Defendants to their
 4 respective named-insured contractors and Pulte's additional insured status, as specified
 5 herein, the Defendants have a duty to indemnify Pulte for any liability Pulte has incurred
 6 as a result of the *Albin* Claim for property damage that arises out of and/or that is caused in
 7 whole or in part by the Defendants' respective named insured contractors' work.

8 166. The Defendants breached their duties by refusing to defend Pulte, or in the
 9 case of the *Albin* Participating Insurers, failing to fully defend Pulte. On information and
 10 belief, Defendants misrepresented policy provisions and/or material facts related to
 11 coverage, failed to make prompt payment of Pulte's demands for reimbursement of its
 12 defense costs, and/or otherwise failed to respond to Pulte's tender of its defense of the
 13 *Albin* Claim. As a result of Defendants' conduct, Pulte has been forced to expend
 14 significant resources defending itself against the *Albin* Claim. As of the date of the filing
 15 of this Complaint, Pulte has incurred more than \$321,140.19 in attorneys' fees and costs
 16 defending against the *Albin* Claim. To date, Pulte has only been reimbursed for
 17 \$153,900.90 of its incurred attorney's fees and defense costs, leaving a balance of
 18 \$244,933.69.

19 167. Upon information and belief, the Defendants failed to investigate or timely
 20 respond to Pulte's tender of defense and indemnity, if they responded at all.

21 168. Upon information and belief, the Defendants failed to consider the
 22 allegations in the pleadings, facts provided by Pulte, or facts easily discernable.

23 169. Pleading further and in the alternative, in addition to these specific
 24 allegations based on insurance policy endorsements directly adding Pulte as an additional
 25 insured to each policy issued by the Defendants and listed herein, each policy listed herein
 26 above contained a provision or provisions the effect of which is to allow Pulte to stand in
 27 the shoes of the Defendants' named-insured contractors for purposes of coverage.

28 170. The above is not an exclusive list of the Defendants' potential liability to

1 Pulte as other theories of potential coverage and recovery may be apparent based on the
 2 specific policies and/or specific actions of each Defendant.

3 **The Anderson Claim**

4 171. On or about July 8, 2022, certain homeowners in Red Rock served a
 5 construction defect arbitration demand entitled *Abbott, et al. v. Pulte Home Corporation, et*
 6 *al.*, AAA Case No. 01-22-0002-9370 (the “*Anderson Claim*”), on Pulte alleging, among
 7 other things, that certain homes in Red Rock contained defective and negligent
 8 construction, that these defects caused damages for which Pulte is liable.

9 172. The *Anderson Claim* seeks damages from Pulte because of property damage
 10 arising out of the work of various contractors, including Brewer, Cascade Windows, Chas
 11 Roberts, CSM, Davis Kitchens, DSI, Haskins Electric, Johnson Manley, Metric,
 12 Paramount, Roadrunner, Santa Rita, Southwest Concrete, Stockett, Timberlake, Tucson
 13 Plumbing, Valley Wide, and XO Windows.

14 173. The damages sought in the *Anderson Claim* were the type of damages for
 15 which the contractors were contractually obligated to provide additional insured coverage
 16 to Pulte. Therefore, Pulte is entitled to coverage under one or more policies issued by
 17 Allied, BITCO, Companion, Endurance, FMIC, FSIC, James River, Liberty Mutual,
 18 Midwest Family, NGM, Peleus, Pennsylvania, QBE, Safety National, Starr, Twin City,
 19 USIC, and Valley Forge. Specifically, those alleged damages were damages because of
 20 property damage, the damages were caused by an occurrence (i.e., the contractors’
 21 negligent work), and the damages occurred during the policy periods.

22 174. As a result of the *Anderson Claim*, Pulte has incurred and will continue to
 23 incur significant costs, including, but not limited to, forensic, investigative, and repair
 24 costs, attorneys’ fees and other expenses.

25 175. Pulte tendered its defense and indemnity of the *Anderson Claim* to each of
 26 the Defendants under the insurance policies listed herein.

27 176. USIC agreed to participate in Pulte’s defense under the policies it issued to
 28 Haskins Electric, Johnson Manley, Metric, Paramount, Roadrunner, Santa Rita, Southwest

1 Concrete, Valley Wide, and XO Windows. USIC is referred to herein as the “*Anderson*
 2 Participating Insurer” as to Pulte’s claims arising out of these policies only.

3 177. Pursuant to the insurance policies issued by the Defendants to their
 4 respective named-insured contractors and Pulte’s additional insured status, as specified
 5 herein, the Defendants owe a duty to pay all of the defense fees and costs that Pulte
 6 incurred and will continue to incur in defending against the *Anderson* Claim.

7 178. Pursuant to the insurance policies issued by the Defendants to their
 8 respective named-insured contractors and Pulte’s additional insured status, as specified
 9 herein, the Defendants have a duty to indemnify Pulte for any liability Pulte incurs as a
 10 result of the *Anderson* Claim for property damage that arises out of and/or that is caused in
 11 whole or in part by the Defendants’ respective named insured contractors’ work.

12 179. The Defendants breached their duties by refusing to defend Pulte, or in the
 13 case of the *Anderson* Participating Insurer, failing to fully defend Pulte. On information
 14 and belief, Defendants misrepresented policy provisions and/or material facts related to
 15 coverage, failed to make prompt payment of Pulte’s demands for reimbursement of its
 16 defense costs, and/or otherwise failed to respond to Pulte’s tender of its defense of the
 17 *Anderson* Claim. As a result of Defendants’ conduct, Pulte has been forced to expend
 18 significant resources defending itself against the *Anderson* Claim. As of the date of the
 19 filing of this Complaint, Pulte has incurred more than \$95,633.32 in attorneys’ fees and
 20 costs defending against the *Anderson* Claim, and will continue to incur significant
 21 expenses defending against the *Anderson* Claim, which is ongoing. To date, Pulte has only
 22 been reimbursed for \$23,700 of its incurred attorney’s fees and costs, leaving an
 23 outstanding balance to date of \$71,933.32.

24 180. Upon information and belief, the Defendants failed to investigate or timely
 25 respond to Pulte’s tender of defense and indemnity, if they responded at all.

26 181. Upon information and belief, the Defendants failed to consider the
 27 allegations in the pleadings, facts provided by Pulte, or facts easily discernable.

28 182. Pleading further and in the alternative, in addition to these specific

1 allegations based on insurance policy endorsements directly adding Pulte as an additional
2 insured to each policy issued by the Defendants and listed herein, each policy listed herein
3 above contained a provision or provisions the effect of which is to allow Pulte to stand in
4 the shoes of the Defendants' named-insured contractors for purposes of coverage.

5 183. The above is not an exclusive list of the Defendants' potential liability to
6 Pulte as other theories of potential coverage and recovery may be apparent based on the
7 specific policies and/or specific actions of each Defendant.

8 **The Burton Claim**

9 184. On or about July 22, 2022, certain homeowners in Sierra Morado served
10 Pulte with an arbitration demand entitled *Burton, et al. v. Pulte Home Corporation, et al.*,
11 AAA Case No. 01-22-0003-1623 (the "Burton Claim"), alleging, among other things, that
12 certain homes in Sierra Morado contained defective and negligent construction, that these
13 defects caused damages for which Pulte is liable.

14 185. The *Burton* Claim sought damages from Pulte because of property damage
15 arising out of the work of various contractors, including Cascade Electric, Cascade
16 Windows, Chas Roberts, CSM, Davis Kitchens, DSI, Haskins Electric, Johnson Manley,
17 Kaiser Garage, Metric, Paramount, Roadrunner, Santa Rita, Southwest Concrete, Stockett,
18 Timberlake, Tucson Plumbing, Valley Wide, and XO Windows.

19 186. The damages sought in the *Burton* Claim were the type of damages for
20 which the contractors were contractually obligated to provide additional insured coverage
21 to Pulte. Therefore, Pulte is entitled to coverage under one or more policies issued by
22 Allied, Amerisure, BITCO, Cincinnati, Companion, Endurance, FMIC, FSIC, James River,
23 Liberty Mutual, NGM, Peleus, Pennsylvania, QBE, Safety National, Starr, Travelers, Twin
24 City, USIC, Valley Forge, and Wesco. Specifically, those alleged damages were damages
25 because of property damage, the damages were caused by an occurrence (i.e., the
26 contractors' negligent work), and the damages occurred during the policy periods.

27 187. As a result of the *Burton* Claim, Pulte has incurred and will continue to incur
28 significant costs, including, but not limited to, forensic, investigative, and repair costs,

1 attorneys' fees and other expenses.

2 188. Pulte tendered its defense and indemnity of the *Burton* Claim to each of the
 3 Defendants under the insurance policies listed herein.

4 189. Peleus agreed to participate in Pulte's defense under the policies it issued to
 5 Tucson Plumbing. USIC agreed to participate in Pulte's defense under the policies it
 6 issued to Haskins Electric, Johnson Manley, Metric, Roadrunner, Santa Rita, and
 7 Southwest Concrete. Peleus and USIC are referred to herein as the "*Burton* Participating
 8 Insurers" as to Pulte's claims arising out of these policies only.

9 190. Pursuant to the insurance policies issued by the Defendants to their
 10 respective named-insured contractors and Pulte's additional insured status, as specified
 11 herein, the Defendants owe a duty to pay all of the defense fees and costs that Pulte
 12 incurred and will continue to incur in defending against the *Burton* Claim.

13 191. Pursuant to the insurance policies issued by the Defendants to their
 14 respective named-insured contractors and Pulte's additional insured status, as specified
 15 herein, the Defendants have a duty to indemnify Pulte for any liability Pulte incurs as a
 16 result of the *Burton* Claim for property damage that arises out of and/or that is caused in
 17 whole or in part by the Defendants' respective named insured contractors' work.

18 192. The Defendants breached their duties by refusing to defend Pulte, or in the
 19 case of the *Burton* Participating Insurers, failing to fully defend Pulte. On information and
 20 belief, Defendants misrepresented policy provisions and/or material facts related to
 21 coverage, failed to make prompt payment of Pulte's demands for reimbursement of its
 22 defense costs, and/or otherwise failed to respond to Pulte's tender of its defense of the
 23 *Burton* Claim. As a result of Defendants' conduct, Pulte has been forced to expend
 24 significant resources defending itself against the *Burton* Claim. As of the date of the filing
 25 of this Complaint, Pulte has incurred more than \$64,285.61 in attorneys' fees and costs
 26 defending against the *Burton* Claim, and will continue to incur significant expenses
 27 defending against the *Burton* Claim, which is ongoing. To date, Pulte has not been
 28 reimbursed for any of its incurred attorneys' fees and costs.

1 193. Upon information and belief, the Defendants failed to investigate or timely
 2 respond to Pulte's tender of defense and indemnity, if they responded at all.

3 194. Upon information and belief, the Defendants failed to consider the
 4 allegations in the pleadings, facts provided by Pulte, or facts easily discernable.

5 195. Pleading further and in the alternative, in addition to these specific
 6 allegations based on insurance policy endorsements directly adding Pulte as an additional
 7 insured to each policy issued by the Defendants and listed herein, each policy listed herein
 8 above contained a provision or provisions the effect of which is to allow Pulte to stand in
 9 the shoes of the Defendants' named-insured contractors for purposes of coverage.

10 196. The above is not an exclusive list of the Defendants' potential liability to
 11 Pulte as other theories of potential coverage and recovery may be apparent based on the
 12 specific policies and/or specific actions of each Defendant.

13 197. The *Albin* Participating Insurers, *Abercrombie* Participating Insurers, *Affeld*
 14 Participating Insurers, *Anderson* Participating Insurer, and *Burton* Participating Insurers
 15 are collectively referred to as the "Participating Insurers."

16 **USIC's Delays In Defending Pulte**

17 198. Pulte began tendering its defense of the first of the Underlying Claims to
 18 USIC on March 4, 2020. With each tender, Pulte implored USIC to come to its aid by
 19 defending it against the construction defect claims—each of which alleges potential
 20 liability against Plaintiff arising out of the work of USIC's named insureds and thus trigger
 21 USIC's duty to defend Pulte.

22 199. USIC did not come to Pulte's aid. Instead, USIC delayed, from ninety (90)
 23 days to up to five-hundred eighty-three (583) days from the time Pulte tendered its defense
 24 of the Underlying Claims until the time that USIC finally agreed to defend Pulte. In fact,
 25 USIC did not acknowledge a duty to defend any of the Underlying Claims until February
 26 12, 2021, nearly seven months after Pulte began tendering the Underlying Claims to USIC.

27 200. In many instances, USIC denied Pulte's tenders and only begrudgingly
 28 agreed to defend after Pulte reasserted its tender and pointed out the errors in USIC's

1 coverage positions. Even after agreeing to participate in Pulte's defense, USIC refused to
2 provide Pulte with a complete defense for covered and non-covered claims, as is required
3 under Arizona law and under the USIC Policies.

4 201. USIC's belated agreement to defend was just the beginning of the tactics
5 USIC employed in order to attempt to avoid paying Pulte's defense costs in the Underlying
6 Claims. Despite agreeing to defend Pulte, USIC refuses to pay its share of Pulte's defense
7 costs.

8 202. Furthermore, despite USIC's delays in acknowledging its duty to defend
9 Pulte in the Underlying Claims, USIC refuses to agree to defend Pulte through Pulte's
10 established counsel in the Underlying Claims. Instead, USIC insists on attempting to force
11 Pulte to change counsel well into its defense of the Underlying Claims and has attempted
12 to appoint new counsel that (1) has conflicts of interest with Pulte, (2) has represented
13 Pulte's contractors in actions by Pulte against those contractors in the past, (3) has no
14 institutional knowledge about Pulte, and (4) has no understanding of the Underlying
15 Claims, some of which have been pending for years. In fact, USIC insists on appointing
16 different law firms to represent Pulte in actions that arise out of work performed at the
17 same Developments. In short, USIC delayed in acknowledging its duty to defend Pulte in
18 the Underlying Claims, refuses to fully reimburse Pulte for its defense costs, and insists on
19 forcing Pulte to change counsel even though its defense in the Underlying Claims is well
20 underway.

21 203. For example, On February 1, 2023, USIC insisted that Pulte accept new
22 defense counsel of USIC's choosing in the *Albin* Claim. USIC insisted that Pulte accept
23 new defense counsel more than 900 days after Pulte tendered its defense in the *Albin*
24 Claim, and more than 700 days after USIC acknowledged its duty to defend Pulte in the
25 *Albin* Claim.

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27 ///

28 ///

1 **FIRST CAUSE OF ACTION**
 2 **(Declaratory Relief)**
 3 **(Against All Defendants)**

4 204. Pulte realleges the allegations contained in paragraphs 1 through 203,
 5 inclusive, and incorporate them by reference as though fully set forth herein.

6 205. Pulte is named as an additional insured or is a known third-party beneficiary
 7 of each of the insurance policies issued by the Defendants listed herein.

8 206. An actual controversy has arisen and now exists between Pulte, on the one
 9 hand, and Defendants, on the other hand, in that Pulte contends that it is an additional
 10 insured under the policies listed herein, that Defendants owe a separate and independent
 11 duty to promptly provide Pulte with a full and conflict-free defense of the Underlying
 12 Claims, and that Defendants owe a duty to indemnify Pulte for damages arising out of the
 13 work or operations of Defendants' named-insured contractors.

14 207. Pulte is informed and believes that Defendants contend otherwise.

15 208. Pulte desires a judicial determination as follows:

- 16 a. that Pulte is an additional insured under the Defendants' policies
 17 issued herein;
- 18 b. that Defendants each owe a separate and independent duty to defend
 19 Pulte in each of the Underlying Claims described herein;
- 20 c. that the scope of this duty is to provide Pulte with an immediate,
 21 conflict-free and full defense;
- 22 d. that the obligations of Defendants to provide Pulte with an immediate,
 23 conflict-free, and full defense is not diminished or reduced when other insurers owe Pulte
 24 this same duty;
- 25 e. that USIC lost, forfeited, and waived whatever right to control Pulte's
 26 defense, including appointing counsel of USIC's choice, it may have had by breaching its
 27 duty to defend Pulte and because of conflicts of interest between USIC and Pulte and
 28 conflicts of interest between Pulte and USIC's chosen counsel.

209. A declaratory judgment is both proper and necessary so that the respective rights, duties, and obligations of Pulte and Defendants may be determined.

SECOND CAUSE OF ACTION

Breach of Contract

(Against All Defendants)

210. Pulte realleges the allegations contained in paragraphs 1 through 209, inclusive, and incorporates them by reference as though fully set forth herein.

211. Pulte requested that Defendants defend Pulte against the Underlying Claims under the insurance policies each of the Defendants issued to their respective named-insured contractors, as described more fully above. Pulte has performed all obligations owing under each of the policies in connection with its tender of defense, and Pulte has satisfied all relevant conditions precedent.

212. Defendants have failed to discharge their contractual duties to defend Pulte against the Underlying Claims. More particularly, Defendants, with the exception of the Participating Insurers: (1) breached their contracts by failing to promptly respond to Pulte's tenders, if they responded at all; (2) breached their contracts by refusing to provide Pulte with a defense; and (3) breached their contracts by refusing to fully investigate Pulte's tender.

213. The Participating Insurers have failed to discharge their contractual duties to defend Pulte against the Underlying Claims by failing to provide Pulte with a full and complete defense.

214. In addition to the foregoing, USIC refuses to acknowledge its duty to provide Plaintiffs with a full and conflict-free defense.

215. Defendant USIC has further breached its insurance contracts by failing to at least reimburse Pulte for the defense fees and costs that Pulte incurred from the date on which each of the Underlying Claims was tendered to USIC to the date on which USIC attempted to assign counsel to defend Pulte.

216. As a direct and proximate result of Defendants' conduct as alleged in this

Complaint, Pulte has been damaged and will continue to be damaged in an amount to be proven at trial.

THIRD CAUSE OF ACTION
Breach of the Duty of Good Faith and Fair Dealing
(Against Defendant USIC)

217. Pulte realleges the allegations contained in paragraphs 1 through 216, inclusive, and incorporate them by reference as though fully set forth herein.

218. USIC owes Pulte a duty of good faith and fair dealing, obligating USIC to put Pulte's interests equal with or ahead of their own interests and to do nothing to deprive Pulte of policy benefits.

219. Rather than honor its obligations, USIC has instead sought to protect its own interests and has subordinated Pulte's interests by refusing to discharge contractual duties without reasonable grounds or good cause.

220. In addition, USIC has acted with knowledge or reckless disregard of the lack of a reasonable grounds or good cause.

221. Accordingly, USIC has deprived Pulte of its rights and benefits under their policies. For example:

a. Pursuant to clearly applicable law, USIC has a duty to promptly investigate and respond to Pulte's tenders and indicate whether it would defend Pulte against the claims involving the Developments. USIC understands and is fully aware of this duty. Despite its knowledge of this obligation, USIC has failed to respond to Pulte's tenders in a timely fashion. On information and belief, these delays violate USIC's own internal policies. To further delay making coverage decisions and avoid assuming the financial burden of defending Pulte, on some occasions USIC requested documents that Pulte had already supplied to USIC so as to force Pulte to continue defending itself and incurring costs without USIC's support. USIC delayed rendering coverage decisions in conscious disregard of the risk that these delays would jeopardize Pulte's ability to adequately defend itself against the claims involving the Developments, and would

1 jeopardize Pulte's ability to settle those matters. USIC's decisions to delay responding to
2 Pulte's tenders were motivated by a desire to unfairly enhance its own profits by avoiding
3 contractual obligations and ignoring the contractual rights and economic interests of Pulte.
4 USIC acted in a deliberate and concerted fashion to achieve this self-serving economic
5 objective. USIC's conduct in this regard tortiously breaches the duty of good faith and fair
6 dealing owed to Pulte, and recklessly disregards Pulte's economic and property rights.

7 b. Pursuant to clearly applicable law, USIC has a duty to fully defend
8 Pulte, as opposed to only providing an equitable or partial defense based on the liability of
9 its named insureds. USIC is fully aware of this duty. Despite USIC's knowledge that it
10 has a duty to defend the entirety of the claims related to the Developments pursuant to
11 clearly applicable law, it unreasonably refused to do so. For example, USIC agreed to
12 defend Pulte for all of the claims, but asserted that it has no obligation to participate in the
13 defense of Pulte for claims or damages which are not covered under the policy(s) and that
14 USIC will only participate in the defense of Pulte for its equitable share of the reasonable
15 and necessary amounts incurred in defending Pulte. USIC's conduct in this regard is
16 unreasonable and tortiously breaches its duty of good faith and fair dealing owed to Pulte.

17 c. USIC has a duty to supply Pulte independent counsel because it
18 cannot provide a conflict free defense. USIC is fully aware of this duty. Despite USIC's
19 knowledge of its duty to supply Pulte independent counsel because of its reservations of
20 rights and the resulting conflicts of interest, USIC has tried to force Pulte to accept new,
21 conflicted defense counsel. USIC's attempts to force Pulte to accept new, conflicted
22 defense counsel are motivated by a desire to enhance unfairly its own profits by avoiding
23 its contractual obligations and ignoring the contractual rights and economic interests of
24 Pulte. USIC acted in a deliberate fashion to achieve this self-serving economic objective.
25 USIC's conduct in this regard tortiously breaches the duty of good faith and faith dealing
26 owed to Pulte and recklessly disregards Pulte's economic and property rights.

27 d. USIC has a duty to provide Pulte, as an additional insured under the
28 USIC policies, with an immediate defense. USIC delayed in acknowledging its obligation

1 to defend Pulte, and then attempted to force Pulte to switch defense counsel. USIC refused
2 and continues to refuse to at least reimburse Pulte for the defense costs that were incurred
3 from the date on which Pulte tendered the Underlying Claims to USIC to the date on which
4 USIC attempts to assign new counsel to defend Pulte. It is undisputed that these defense
5 costs are owed by USIC, regardless of whether the defense counsel USIC attempts to
6 assign to defend Pulte has conflicts with Pulte. USIC has refused to pay these amounts
7 which are due and owing to Pulte.

8 222. USIC's conduct as alleged in this Complaint is part of a pattern of unfair
9 claims practices intentionally engaged in by USIC to enhance unfairly its own profits by
10 avoiding contractual obligations and ignoring the contractual rights and economic interests
11 of Pulte and other additional insureds. These systematic practices include: (1) failing to
12 respond promptly to tenders from additional insureds; (2) wrongfully denying additional
13 insureds coverage owed under policies; and (3) refusing to supply a full and conflict-free
14 defense to additional insureds as required by law and instead trying to limit coverage
15 obligations to funding only a small fraction of the additional insured's defense.

16 223. As a direct and proximate result of USIC's tortious breach of the duty of
17 good faith and fair dealing, Pulte has suffered damages, in excess of \$75,000, including
18 without limitation, general and specific damages, legal costs incurred to obtain the benefits
19 of the respective policies and pre-judgment and post-judgment interest.

20 224. In addition, USIC's conduct as alleged in this Complaint is despicable and
21 has been carried out in willful and conscious disregard of Pulte's rights and economic
22 interests, and is malicious, fraudulent and oppressive. Accordingly, USIC's conduct
23 entitles Pulte to punitive damages.

24 225. USIC's malicious, fraudulent, and oppressive conduct includes, for example:
25 a. As described above, USIC was fully aware of its duty to promptly
26 investigate and respond to Pulte's tenders and indicate whether it would defend and
27 indemnify Pulte, but instead delayed responding to Pulte's tenders. USIC knows that
28 failing to promptly respond to Pulte's tenders and to immediately defend it violates Pulte's

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contractual rights, but USIC does so anyway in willful and conscious disregard of Pulte's rights.

b. As described above, USIC is fully aware of its duty to defend additional insureds, like Pulte, and to indemnify them for liability arising out of the work of USIC's named insured, but routinely attempts to skirt these obligations by treating additional insureds differently from its named insureds. USIC knows that this behavior violates the rights of additional insureds, like Pulte, but intentionally tries to deprive additional insureds, like Pulte, of their policy benefits in willful and conscious disregard of their rights.

c. As described above, USIC was and is fully aware of its duty to supply Pulte a full defense as opposed to only providing an equitable or partial defense based on the liability of its named insured. USIC knows that failing to provide Pulte a full defense violates their contractual rights, but USIC intentionally fails to provide a complete defense, in willful and conscious disregard of Pulte's rights.

d. As described above, USIC was and is fully aware of its duty to supply Pulte independent counsel because it cannot provide a conflict-free defense and because it breached its insurance contract by failing to immediately defend Pulte. USIC knows that failing to provide Pulte with independent counsel violates its rights, but intentionally tries to deprive Pulte of independent counsel in willful and conscious disregard of Pulte's rights.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. FIRST CAUSE OF ACTION:

- a. For declaratory relief as described above;
 - b. For all costs and expenses at the full extent permitted by law;
 - c. For pre-judgment interest and post-judgment interest at the full extent permitted by law;
 - d. For attorneys' fees to the extent recoverable by applicable law;
and

1 e. For such other and further relief as the Court deems fair and
2 proper.

3 **SECOND CAUSE OF ACTION:**

- 4 a. For general and specific damages in an amount to be proven at
5 trial;
6 b. For all costs and expenses at the full extent permitted by law;
7 c. For pre-judgment interest and post-judgment interest at the full
8 extent permitted by law;
9 d. For attorneys' fees to the extent recoverable by applicable law;
10 and
11 e. For such other and further relief as the Court deems fair and
12 proper.

13 **THIRD CAUSE OF ACTION:**

- 14 a. For general and specific damages in an amount to be proven at
15 trial;
16 b. For punitive damages at the full extent permitted by law;
17 c. For all costs and expenses at the full extent permitted by law;
18 d. For pre-judgment interest and post-judgment interest at the full
19 extent permitted by law;
20 e. For attorneys' fees to the extent recoverable by applicable law;
21 and

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1 f. For such other and further relief as the Court deems fair and
2 proper.

3 DATED: April 4, 2023

PAYNE & FEARS LLP

5 By /s/ Scott S. Thomas

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